

ABSTRACT

This thesis addresses the current, ever-developing framework of rules governing trading in the most widespread financial instrument – OTC derivatives. The main objective of the thesis is to analyse the current state of the regulation of trading in OTC derivatives within the EU – namely, the EMIR Regulation. Subsequently, it examines whether the legal framework has been set up properly and effectively, and explores what steps should be taken in the near future in order to improve it.

Given that the subject of this thesis is much more of an economic than a legal nature, its first part introduces OTC derivatives as a concept, and the specifics of trading in them. The second part examines the status of OTC derivatives within the financial market over time, starting from their modern-day beginnings in the 1990s, through their role in the global financial crisis of 2007 and 2008, to the current issues related to them. The main part of the thesis is devoted to the EMIR Regulation, its scope of application, and in particular the three main obligations which EMIR introduces in relation to OTC derivatives. These comprise, firstly, the obligation to perform a central clearing through central counterparties; secondly, the obligation to observe specific risk mitigation techniques for OTC derivative contracts not cleared by a central counterparty; and thirdly, the obligation to report OTC derivative transactions to the trade repository. The largest part of the thesis concerns the obligation of central clearing mentioned first above, as it is the cornerstone of the EMIR Regulation, and at the same time its most commented-upon and most controversial part. The thesis analyses in detail the models of central clearing, their advantages and disadvantages, the scope of the clearing obligation in relation to both the subjects and the categories of OTC derivatives subject to EMIR. Last but not least, the thesis deals with the matter of the central counterparties. A closing section comments on the current global situation regarding the regulation of trading in OTC derivatives and its imminent decline.

Based on my research, I conclude that the current regulation of trading in OTC derivatives is appropriate and, within the limits of what is feasible, is also sufficient. Having said that, the OTC derivatives market is a dynamic and exponentially growing market with which one does not easily keep pace. With this in mind, I consider it essential that the EMIR Regulation, or the implementing regulations issued in connection with EMIR, be conceived as flexible as possible and reflect the current market situation of both financial derivatives and their respective underlying assets.